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Atty: AWC/MC

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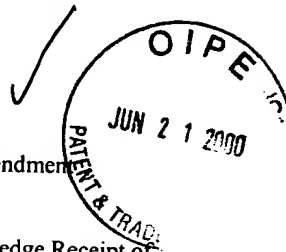
Application No.: 09/385,812 Date Filed: August 30, 1999

Applicant: Guidant Corp. Inventor(s): Charles S. Taylor et al.

Title: Access Platform for Internal Mammary Dissection

Enclosures:

- ☒ Non Fee Transmittal
- ☒ Request for Declaration of *Interference*
- ☒ Copy of Supplemental Preliminary Amendment
- ☒ Appendices A, B, and C; Exhibits 1-3



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GAU 3731

EXPRESS MAIL CERTIFICATE

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

Typed or Printed Name	Daye Glisson	Express Mail No.	EL563389427US
Signature	<i>Daye Glisson</i>	Date	June 21, 2000

**NON FEE
TRANSMITTAL**

Note: Effective October 1, 1998.
Patent fees are subject to annual revision.

Attorney Docket Number	GUID-006CON3
First Named Inventor	Charles S. Taylor, et al.
Application Number	09/385,812
Filing Date	August 30, 1999
Group Art Unit	3731
Examiner Name	Lewis, W.
Title	ACCESS PLATFORM FOR INTERNAL MAMMARY DISSECTION

Enclosed are the following documents:

- ☒ Request for Declaration of Interference
☒ Copy of Supplemental Preliminary Amendment
☒ Appendices A, B, and C and Exhibits 1-3

3731

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JUN 30 2000
TC 3700 MAIL ROOM

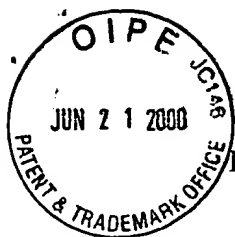
CLAIMS

No. of claims as filed or after amendment	Most claims previously paid		Extra claims	Fee from below	Fee Due
Total claims	18	-	20	= 0	x
Ind. claims	2	-	3	= 0	x
Multiple Dependent claims					x

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description
103	18	203	9	Claims in excess of 20
102	78	202	39	Independent claims in excess of 3
104	260	204	130	Multiple dependent claim
109	78	209	39	Reissue independent claims over original patent
110	18	210	9	Reissue claims in excess of and over original patent

SUBMITTED BY		Complete (if applicable)	
Typed or Printed Name	Alan W. Cannon, BOZICEVIC, FIELD & FRANCIS LLP	Reg. Number	34,977
Signature	<i>Alan W. Cannon</i>	Date	June 21, 2000
		Deposit Account	50-0815

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#12

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of -)

Group Art Unit: 3731)

Charles S. Taylor et al.)

Examiner: W. Lewis)

Serial No.: 09/385,812)

Filed: August 30, 1999)

For: ACCESS PLATFORM FOR)
INTERNAL MAMMARY DISSECTION)RECEIVED
JUN 30 2000
TC 3700 MAIL ROOM**REQUEST FOR DECLARATION OF INTERFERENCE**
UNDER 35 U.S.C. § 135 AND 37 C.F.R. § 1.607Assistant Commissioner of Patents
Washington, D.C. 20231

Sir:

In accordance with 35 U.S.C. § 135 and 37 C.F.R. § 1.607, and further to the Official Action dated May 22, 2000, Applicants respectfully resubmit their request for the declaration of an interference between the instant application and U.S. Pat. No 5,908,382 to Tibor B. Koros et al., attached hereto as Exhibit 1, having the proposed Count set forth herein.

EXPRESS MAIL CERTIFICATE			
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.			
Typed or Printed Name	Dave Glisson	Express Mail No.	EL563389427US
Signature	<i>Dave Glisson</i>	Date	June 21, 2000

REMARKS

U.S. Patent No. 5,908,382 (Exhibit 1) issued on June 1, 1999 to Tibor B. Koros et al. (hereinafter "the Koros patent"). The present application (i.e., application Serial No. 09/385,812) is a continuation of application Serial No. 08/903,516, filed on July 30, 1997, now issued as U.S. Patent No. 5,944,736, which in turn is a continuation of Serial No. 08/787,748, filed on January 27, 1997, now abandoned, which in turn is a continuation-in-part of application Serial No. 08/619,903, filed on March 20, 1996, now issued as U.S. Patent No. 5,976,171, which in turn is a continuation-in-part of co-pending application Serial No. 08/604,161, filed on February 20, 1996, now issued as U.S. Patent No. 5,730,757. The present application claims the benefit under 35 U.S.C. §120 of these previously filed United States patent applications.

Please be advised that the claims included in the above-identified application, and presented in this Request for Interference, are introduced for the purpose of provoking an interference with the Koros patent. Applicants' claims 89, 90, 92, 94, 95, 96, 100, 102, and 103 were copied verbatim from the Koros patent and are identical to claims 1, 2, 4, 6, 7, 8, 12, 14, and 15, respectively, of the Koros patent. Applicants' claims 106, 107, 108, 109, 111, 110, 112, 113, and 114 were substantially copied from the Koros patent, with only minor differences in claim language, and correspond to claims 1, 2, 4, 6, 7, 8, 12, 14, and 15, respectively, of the Koros patent. Because Applicants' effective filing date is January 27, 1997, Applicants are senior to the filing date of July 8, 1998 for the Koros patent by more than one (1) year. Thus, Applicants need not present a prima facie showing pursuant to 37 C.F.R. § 1.608. However, in addition to showing support for the copied claims in the instant application, which appears in

Appendix A to this Request for Interference, Applicants are able to show support for the copied claims in related application nos. 08/619,903 (filed March 20, 1996) and 08/604,161 (filed February 20, 1996), which are attached hereto as Exhibits 2 and 3, respectively. The support for copied claims found in application nos. 08/619,903 and 08/604,161 appears in Appendix B and C, respectively, to this Request for Interference.

In accordance with 37 CFR § 1.607, the copied claims may be specifically applied to Applicants' disclosures in the instant application and related application nos. 08/619,903 and 08/604,161, as set forth in Appendices A, B, and C, respectively. Although the cited specification support appearing in Appendices A, B, and C is extensive, the cited support is not intended to be exhaustive. Applicants, therefore, reserve their right to establish support by reference to specification text and figures not cited herein.

With regard to the Examiner's assertion that claims 89-114 of the present application have been copied from the Koros patent, Applicants note that only claims 89-105 were copied from the Koros patent. Claims 106-114, although corresponding to the proposed Count, were not copied from the Koros patent. Further, it is noted that claims 91, 93, 97, 98, 99, 101, 104 and 105 were canceled without prejudice in the Supplemental Preliminary Amendment filed on January 19, 2000, along with the notification of copied claims for interference. A copy of the Supplemental Preliminary Amendment is submitted herewith for the Examiner's convenience.

Before addressing the count, both the Koros patent and the instant application will be generally discussed.

The present application discloses an apparatus and associated methods for providing improved access to a patient's internal mammary artery (IMA) to enable the surgeon to dissect

the IMA and perform necessary arteriotomy and anastomosis procedures as part of a surgical procedure known as Coronary Artery Bypass Grafting (CABG). In general, the apparatus of the present invention is used for insertion between adjacent ribs of the patient and then for the separation and vertical offset of the patient's ribs to create access to the IMA. The apparatus generally includes a spreader member, first and second blade arms attached to the spreader member, first and second blades attached to first and second blade arms, and an offset member for vertically offsetting one of the blades with respect to the other. The offset member is used to lift the interconnected blade and a corresponding portion of the patient's rib cage.

The Koros patent claims a retractor apparatus for intermammary access. According to the claim, the retractor includes a frame having a crossbar, a fixed retractor arm and a movable retractor arm, which is movable toward or away from the fixed arm, a standard retractor blade mounted on the fixed arm, an adjustable lifter blade mounted on the movable arm, and a tilting means to lift a portion of a patient's rib cage.

PROPOSED COUNT

Applicants propose a single Count for this interference. The Count is set forth separately below. Please note that the Count and Applicants' claims presented as corresponding to the Count, are fully supported and are disclosed at least as early as January 27, 1997 and most claims are fully supported and disclosed as early as February 20, 1996, the filing date of Application No. 08/604,161 (Exhibit 3). Accordingly, Applicants should be senior party with respect to the subject matter of the requested interference. Further, specification support for Applicants' copied claims, as well as claims 106-114 corresponding to the proposed Count, is set forth in Appendix A. Thus, these new claims do not add any new matter to the pending application. In addition,

Applicants' specification describes what was the best mode of practicing the invention known to the inventor at the time of filing, and that by corresponding various elements of the disclosed embodiment to any claim it is not to be inferred that Applicants' invention is limited to that disclosed embodiment.

COUNT I

Count I is set forth below:

I. An intermammary artery access retractor comprising:
a spreader member having a first blade arm and a second blade arm, said second blade arm being movable toward or away from said first blade arm;
a first blade mounted on said first blade arm;
a second blade mounted on said second blade arm; and
an offset member adapted to lift said second blade relative to said first blade to lift a portion of a ribcage to provide improved access to the intermammary artery.

Applicants submit that claims 1, 2, 4, 6, 7, 8, 12, 14, and 15 of the Koros patent (Exhibit 1) correspond to the proposed count. Applicants further submit that application claims 89, 90, 92, 94, 95, 96, 100, 102, 103, 106, 107, 108, 109, 110, 111, 112, 113, and 114, presented below, correspond to the proposed Count. In conformance with 35 U.S.C. § 135(b), the presented claims were copied into the subject application on August 30, 1999, which is prior to one year from the date on which the Koros patent was granted.

Claims Presented for Interference

89. An intermammary artery access retractor comprising;
a frame having a crossbar, a fixed retractor arm and a movable retractor arm, said

movable arm being movable toward or away from the fixed arm;

a standard retractor blade mounted on said fixed arm;

an adjustable lifter blade mounted on said movable retractor arm;

tilting means for tilting said retractor to lift a portion of a ribcage to provide improved access to the intermammary artery.

90. The retractor according to claim 89 in which said adjustable lifter blade comprises:

blade mounting means;

an adjustable lifter blade hingedly attached to said blade mounting means;

angle adjusting means for adjusting the angle of retraction of said adjustable lifter blade;

whereby said blade lifts an upper portion of the ribcage to provide improved access and visibility of the intermammary artery.

92. The retractor according to claim 90 in which said adjustable lifter blade has a curved portion and a tongue portion; said tongue portion being tapered toward a tip.

94. The retractor according to claim 89 in which said retractor tilting means comprises an adjustable support tower attached to a free end of said crossbar on said retractor frame for raising or lowering the retractor frame to raise an upper portion of the ribcage to provide improved access And visibility of said intermammary artery.

95. The retractor according to claim 94 in which said adjustable support tower comprises a support bar mounted on a free end of said retractor crossbar:

a support shaft;

clamp means for clamping and adjustably positioning said support shaft on said support

bar to raise or lower said retractor.

96. The retractor according to claim 95 including a footpad on an end of said support shaft.

100. The retractor according to claim 90 including means for pivotally mounting said adjustable lifter blade on said movable retractor arm.

102. The retractor according to claim 89 in which said adjustable lifter blade is self-adjusting.

103. The retractor according to claim 102 including mounting means mounting said self-adjusting lifter blade so that said self-adjusting lifter blade swings freely on said movable retractor arm.

106. An intermammary artery access retractor comprising:
a spreader member having a first blade arm and a second blade arm, said second blade arm being movable toward or away from said first blade arm;
a first blade mounted on said first blade arm;
a second blade mounted on said second blade arm;
an offset member adapted to lift said second blade relative to said first blade to lift a portion of a ribcage to provide improved access to the intermammary artery.

107. The retractor according to claim 106 in which said second blade is pivotally attached to said spreader member, and

an angle adjusting means for adjusting the angle of retraction of said second blade;
whereby said blade lifts an upper portion of the ribcage to provide improved access and visibility of the intermammary artery.

108. The retractor according to claim 106 in which said second blade has a curved throat portion and a elongated vane portion; said vane portion being tapered toward a tip.

109. The retractor according to claim 106 in which said offset member comprises an adjustable support arm attached to said spreader member for raising or lowering said second blade relative to said first blade to raise an upper portion of the ribcage to provide improved access and visibility of said intermammary artery.

110. The retractor according to claim 109 including a footpad on an end of said support arm.

111. The retractor according to claim 109 in which said adjustable support arm comprises a stanchion; and
slide member for clamping and adjustably positioning said stanchion on a table or bar and to raise or lower said stanchion to vertically adjust said second blade relative to said first blade.

112. The retractor according to claim 111 including means for pivotally mounting said second blade on said second blade arm.

113. The retractor according to claim 106 in which said second blade is self-adjusting.

114. The retractor according to claim 113 including mounting means mounting said self-adjusting second blade so that said second blade swings freely relative to said spreader member.

CONCLUSION

Applicants respectfully request a declaration of an interference with U.S. Pat. No.

5,908,382 Tibor B. Koros et al. having the proposed Count given above.

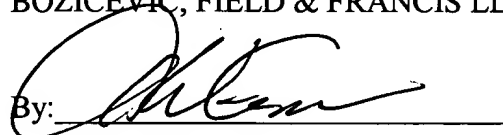
Respectfully submitted,

BOZICEVIC, FIELD & FRANCIS LLP

Date:

June 21, 2000

By:



Alan W. Cannon

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